to any proceeding before the Copyright Royalty Judges that is commenced on or after the date of the enactment of this Act [Oct. 11, 2018].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–303 effective as if included in the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108–419, see section 6 of Pub. L. 109–303, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108–419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104–39, set out as a note under section 101 of this title.

TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 37, PART 385 OF THE CODE OF FEDERAL REGULATIONS

Pub. L. 115–264, title I, § 102(d), Oct. 11, 2018, 132 Stat. 3722, provided that: ''Not later than 270 days after the date of enactment of this Act [Oct. 11, 2018], the Copyright Royalty Judges shall amend the regulations for section 115 of title 17, United States Code, in part 385 of title 37, Code of Federal Regulations, to conform the definitions used in such part to the definitions of the same terms described in section 115(e) of title 17, United States Code, as added by subsection (a). In so doing, the Copyright Royalty Judges shall make adjustments to the language of the regulations as necessary to achieve the same purpose and effect as the original regulations with respect to the rates and terms previously adopted by the Copyright Royalty Judges.''

COPYRIGHT OFFICE PUBLIC OUTREACH AND EDUCATIONAL ACTIVITIES

Pub. L. 115–264, title I, § 102(e), Oct. 11, 2018, 132 Stat. 3722, provided that: ''The Register of Copyrights shall engage in public outreach and educational activities—

''(1) regarding the amendments made by subsection (a) to section 115 of title 17, United States Code, including the responsibilities of the mechanical licensing collective designated under those amendments;

''(2) which shall include educating songwriters and other interested parties with respect to the process established under section 115(d)(3)(C)(i)(V) of title 17, United States Code, as added by subsection (a), by which—

''(A) a copyright owner may claim ownership of musical works (and shares of such works); and

''(B) royalties for works for which the owner is not identified or located shall be equitably distributed to known copyright owners; and

''(3) which the Register shall make available online.''

UNCLAIMED ROYALTIES STUDY AND RECOMMENDATIONS

Pub. L. 115–264, title I, § 102(f), Oct. 11, 2018, 132 Stat. 3722, provided that:

''(1) IN GENERAL.—Not later than 2 years after the date on which the Register of Copyrights initially designates the mechanical licensing collective under section 115(d)(3)(B)(i) of title 17, United States Code, as added by subsection (a)(4), the Register, in consultation with the Comptroller General of the United States, and after soliciting and reviewing comments and relevant information from music industry participants and other interested parties, shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that recommends best practices that the collective may implement in order to—

''(A) identify and locate musical work copyright owners with unclaimed accrued royalties held by the collective;

''(B) encourage musical work copyright owners to claim the royalties of those owners; and

''(C) reduce the incidence of unclaimed royalties.

''(2) CONSIDERATION OF RECOMMENDATIONS.—The mechanical licensing collective shall carefully consider, and give substantial weight to, the recommendations submitted by the Register of Copyrights under paragraph (1) when establishing the procedures of the collective with respect to the—

''(A) identification and location of musical work copyright owners; and

''(B) distribution of unclaimed royalties.''

PERSONS OPERATING UNDER PREDECESSOR COMPULSORY LICENSING PROVISIONS

Pub. L. 94–553, title I, § 106, Oct. 19, 1976, 90 Stat. 2599, provided that: ''In any case where, before January 1, 1978, a person has lawfully made parts of instruments serving to reproduce mechanically a copyrighted work under the compulsory license provisions of section 1(e) of title 17 as it existed on December 31, 1977, such person may continue to make and distribute such parts embodying the same mechanical reproduction without obtaining a new compulsory license under the terms of section 115 of title 17 as amended by the first section of this Act [this section]. However, such parts made on or after January 1, 1978, constitute phonorecords and are otherwise subject to the provisions of said section 115 [this section].''

§ 116. Negotiated licenses for public performances by means of coin-operated phonorecord players

(a) APPLICABILITY OF SECTION.—This section applies to any nondramatic musical work embodied in a phonorecord.

(b) NEGOTIATED LICENSES.—

(1) AUTHORITY FOR NEGOTIATIONS.—Any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(2) CHAPTER 8 PROCEEDING.—Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.

(c) LICENSE AGREEMENTS SUPERIOR TO DETERMINATIONS BY COPYRIGHT ROYALTY JUDGES.—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (b), shall be given effect in lieu of any otherwise applicable determination by the Copyright Royalty Judges.

(d) DEFINITIONS.—As used in this section, the following terms mean the following:

(1) A ''coin-operated phonorecord player'' is a machine or device that—

(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

(B) is located in an establishment making no direct or indirect charge for admission;

(C) is accompanied by a list which is comprised of the titles of all the musical works

available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

(2) An ''operator'' is any person who, alone or jointly with others—

(A) owns a coin-operated phonorecord player;

(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

(Added Pub. L. 100–568, §4(a)(4), Oct. 31, 1988, 102 Stat. 2855, §116A; renumbered §116 and amended Pub. L. 103–198, §3(b)(1), Dec. 17, 1993, 107 Stat. 2309; Pub. L. 105–80, §5, Nov. 13, 1997, 111 Stat. 1531; Pub. L. 108–419, §5(e), Nov. 30, 2004, 118 Stat. 2365.)

PRIOR PROVISIONS

A prior section 116, Pub. L. 94–553, title I, §101, Oct. 19, 1976, 90 Stat. 2562; Pub. L. 100–568, §4(b)(1), Oct. 31, 1988, 102 Stat. 2857, related to scope of exclusive rights in nondramatic musical works and compulsory licenses for public performances by means of coin-operated phonorecord players, prior to repeal by Pub. L. 103–198, §3(a), Dec. 17, 1993, 107 Stat. 2309.

AMENDMENTS

2004—Subsec. (b)(2). Pub. L. 108–419, §5(e)(1), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Parties not subject to such a negotiation may determine, by arbitration in accordance with the provisions of chapter 8, the terms and rates and the division of fees described in paragraph (1).''

Subsec. (c). Pub. L. 108–419, §5(e)(2), substituted ''Determinations by Copyright Royalty Judges'' for ''Copyright Arbitration Royalty Panel Determinations'' in heading and ''the Copyright Royalty Judges'' for ''a copyright arbitration royalty panel'' in text.

1997—Subsec. (b)(2). Pub. L. 105–80, §5(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2) ARBITRATION.—Parties to such a negotiation, within such time as may be specified by the Librarian of Congress by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the Librarian of Congress of any determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.''

Subsec. (d). Pub. L. 105–80, §5(2), added subsec. (d).

1993—Pub. L. 103–198, §3(b)(1)(A), renumbered section 116A of this title as this section.

Subsec. (b). Pub. L. 103–198, §3(b)(1)(B), (C), redesignated subsec. (c) as (b), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal'' in two places in par. (2), and struck out former subsec. (b) which related to limitation on exclusive right if licenses not negotiated.

Subsec. (c). Pub. L. 103–198, §3(b)(1)(B), (D), redesignated subsec. (d) as (c), in heading substituted ''Arbitration Royalty Panel'' for ''Royalty Tribunal'', and in text substituted ''subsection (b)'' for ''subsection (c)'' and ''a copyright arbitration royalty panel'' for ''the Copyright Royalty Tribunal''.

Subsecs. (d) to (g). Pub. L. 103–198, §3(b)(1)(B), (E), redesignated subsec. (d) as (c) and struck out subsecs. (e) to (g) which provided, in subsec. (e), for a schedule for negotiation of licenses, in subsec. (f), for a suspension of various ratemaking activities by the Copyright Royalty Tribunal, and in subsec. (g), for transition provisions and retention of Copyright Royalty Tribunal jurisdiction.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108–419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

EFFECTIVE DATE

Section effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions as in effect when cause of action arose, see section 13 of Pub. L. 100–568, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

[§ 116A. Renumbered § 116]

§ 117. Limitations on exclusive rights: Computer programs

(a) MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.—Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

(2) with respect to any computer program or part thereof that is not necessary for that ma-